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HEALTH CARE FOR ALL NEW YORK

STATEMENT IN OPPOSITION

S.4540 (SEWARD)/A.7439 (CAHILL)

PROPOSED PRIOR APPROVAL ACT, AN ACT TO AMEND THE INSURANCE LAW, IN RELATION TO RATING OF INDIVIDUAL AND SMALL GROUP HEALTH INSURANCE POLICIES

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HCFANY is a statewide coalition of over 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers. We strive to bring consumer voices to the policy conversation, ensuring that the concerns of real New Yorkers are heard and reflected. For more information on HCFANY, visit us on the web at www.hcfany.org.

Thanks to the opening of the New York State of Health Marketplace, more New Yorkers than ever are covered by private health insurance. Access to health coverage must remain affordable to be relevant and meaningful, but proposed changes to the Prior Approval provisions of the health insurance law put affordability in jeopardy.

HCFANY opposes Senate Bill 4540/Assembly Bill 7439, which would change the law regarding prior approval by the Department of Financial Services ("DFS") for health insurance companies seeking premium rate increases.

Under the 2010 Prior Approval law, DFS may review rates in the individual and small group (2-50) markets. DFS can adjust rate increases proposed by health insurers if they find the proposed rate is "unreasonable," "excessive," "inadequate," or "unfairly discriminatory." DFS

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considers many factors when deciding whether to approve a rate proposal, including the current and predicted future costs of medical care and prescription drugs and the insurer's past claims experience and financial condition. Consumers, consumer groups, and small businesses can submit comments to challenge rate proposals that they believe are too high. This public process is a hallmark piece of the 2010 law. In 2014, DFS reduced the average proposed rate increase from 12.5% to 5.7% for consumers on the individual market and from 13.9% to 6.9% on the small group market, saving policyholders in New York an estimated \$1 billion. The time period in which DFS must make determinations on rate applications is already quite compressed, at 60 days.

S.4540/A.7439 would change the process by which DFS makes rate determinations in the prior approval process. Principally, it compels DFS to issue initial determinations of rates thirty days after applications have been submitted by insurance companies. The current law allows a thirty day period for public comment, but that public comment opportunity would be rendered largely meaningless under S.4540/A.7439, as the decision on the rate would be issued simultaneously with the receipt of public comments. DFS would have no opportunity to consider the public comments submitted before deciding on the rate. HCFANY strongly objects to any legislation that effectively silences consumer voices.

Secondly, the bill places burdensome requirements on DFS and creates a second, largely undefined and potentially competing set of principles which is likely to create a state of regulatory confusion and invite litigation. The legislation does not state what it means when it says the rates must be appropriate to the population covered and services provided. Under existing law, insurers submit rate requests based on historical claim history and projected trends of future claims, both of which, by definition, are keyed to the population covered and services provided. DFS makes its decisions based in large part on its judgments regarding these assumptions in determining whether a rate is excessive or inadequate. If the new verbiage is intended to add a different set of criteria, it is not clear what those criteria are, or it will be left to the courts to define them. If the law is intended to restate the process as it already exists, it is simply confusing, surplus language.

The requirement that the rates be actuarially valid is already in the current statute, and insurers thus already have the right to challenge rates that are not actuarially sound. This legislation would not promote that public policy principle. The proposed new requirement of a detailed actuarial memorandum from a limited department working to comply with ever shorter decision deadlines, however, would create an institutional bias in favor of rubber stamping insurers' rate requests.

Further, to the extent that this statute would elevate compliance with generally accepted actuarial principles above all other requirements, it is an unwarranted intrusion on DFS's administrative discretion. Some products have insufficient populations for judgments to be made on such principles (See *Excellus Health Plan, Inc. v. Serio*, 2 N.Y.3d 166 (2004)). Products may be priced according to statutory loss ratios, but may be structured in discriminatory ways to favor some populations over others for competitive purposes. Insurers may have excessive reserves that can be employed to avoid rate increases that are actuarially justified but would have a severe



adverse impact on the public. All of these factors, and numerous others, should be considered by DFS in approving rates.

This proposed law would move New York back in the direction of the unsatisfactory “file and use” system that the current statute replaced. It would severely limit the benefits of the prior approval process and give leeway to insurance companies who seek to increase their profits and executive salaries at the expense of premium-paying consumers. For these reasons, HCFANY urges the legislature to oppose such a measure.

Thank you for your consideration.